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Attorney for Defendant
BERNADETTE ESCUE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)	No. CR 07-00610 JF
)	
Plaintiff,)	
)	MOTION TO CONTINUE SENTENCING
v.)	HEARING RE: RESTITUTION
)	
BERNADETTE ESCUE,)	
)	
Defendant.)	
)	

Defendant Bernadette Escue, through counsel, hereby moves the Court to continue the sentencing hearing regarding restitution, which currently is scheduled for July 16, 2008. Counsel requests that the hearing be continued to September 3, 2008.

This motion is made on the grounds that the parties agree that a continuance is appropriate, but they have not agreed upon a new date, and defense counsel will be out of town from June 30 through July 5, so he is submitting this motion prior to his departure. This motion is made on the further grounds that a continuance is necessary so that defense counsel may obtain documentation necessary to address the issue of restitution.

This motion is based on the attached declaration of counsel, the *Application for Issuance of Subpoenas Duces Tecum* (Doc. 39) filed this date, and the records and matters on file in this case.

Dated: June 27, 2008

/S/

Mark R. Vermeulen
Attorney for Defendant
BERNADETTE ESCUE

DECLARATION OF COUNSEL

I, Mark R. Vermeulen, declare:

1. I am an attorney duly admitted to practice before this Court. I am appointed under the Criminal Justice Act to represent Defendant Bernadette Escue in this case.

2. Ms. Escue was sentenced on May 8, 2008 to one year and one day in prison, following the earlier entry of a guilty plea to a violation of 18 U.S.C. § 1343 (wire fraud). At the sentencing hearing, the Court expressly reserved the determination of restitution, based in part on the fact that insufficient documentation had been provided by the entities seeking restitution (Network Appliance, Inc. and Huron Consulting Group). The Court set a further hearing for July 16, 2008.

3. The Probation Officer thereafter requested additional documentation from the Network and Huron, but no further documentation has been provided. More detailed information on this aspect is set forth in the *Application for Issuance of Subpoenas Duces Tecum* (Doc. 39), which I filed today.

4. I communicated earlier this week with AUSA Joe Fazioli regarding the need for a continuance. I informed him that I would be out of town beginning June 30 and that I therefore needed to resolve the issues regarding this continuance this week. I proposed that we continue the hearing to September 24, 2008 in light of the considerable previous delays by Network and Huron, the difficulties we have had in obtaining documentation from them regarding their claims, and the need to obtain the documentation and assess it once we get it. Mr. Fazioli expressed that he would rather not continue the hearing as far as late September, but that he was willing to consider mutually agreeable dates for all parties in August or at the very beginning of September. He later proposed that we keep the July 16 hearing date and convert that to a status hearing. I declined this proposal, and proposed that we adopt his suggestion for a continue hearing date of September 3. I've not heard back from him.

5. I have communicated with Probation Officer Lori Timmons. She has indicated that she has no objection to a continuance, and that she is amenable to continuing the hearing to September so that I may obtain the necessary documentation.

6. I respectfully request that the Court continue the sentencing hearing regarding restitution to September 3, 2008.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 27, 2008 at San Francisco, CA.

/S/

Mark R. Vermeulen